

TOXOCITY PROGRAM REVIEW
STAKEHOLDER'S GROUP MEETING #2
AUGUST 24, 2001

PRESENT: Bill Taylor, Sean Mahoney, Deirdre Whitehead, Bill Zarolinski, Bill Ball, Sandy Perry, Jay Beaudoin, Nick Bennett, Joe, Payne, Darold Wooley, John Barlow, Steve Silva, Jennie Bridge, Bill Alsop, Brian Kavanah, Clarissa Trasko, Stuart Rose, Gregg Wood, Barry Mower, Dennis Merrill

1. There were no comments on the process or the last meeting.
2. In follow up to the last meeting DEP briefly updated the group on the status of proposed biocriteria rules and the Surface Water Ambient Toxics (SWAT) program. The rule is completed in draft form, but the Department still needs to have an outside contractor do a computer model that will analyze the data to make the rule functional. The SWAT program compliments, but does not substitute for, effluent toxics testing. SWAT is often oriented to evaluation of watersheds rather than individual discharge sources. In selecting sampling sites, the SWAT program does confer with DEP permitting staff, and the information is used to evaluate proposed permits. There was considerable discussion on the relationship between SWAT and the toxics rule, with the following points being made.
 - The regulated community does not feel that DEP is using all of the available SWAT data to evaluate discharge situations, and that program should interact more with the toxics rule.
 - Environmental interests are concerned that more is not done to connect discharge source of toxics to fish and sediment contamination.
 - There is a need to get the biomonitoring rules up and running as part of the toxics rule.
 - A holistic approach should be used to evaluate information and to decide if effluent limits are needed.
 - The existing protocols address how exceedences should be handled. Since the program requires little testing, often once per year, a single exceedence is important and the only way to address uncertainty is to do additional testing.
3. EPA provided a brief update on national programs. No new guidance is expected from EPA and it is best for Maine to rely on its own information. EPA does have some information on WET test procedures (Dennis will forward web sites to the group). The 1600 series for metals testing is aimed largely at testing of ambient waters and tests for only mercury and cyanide have been approved for use on effluents. Getting approval for use of alternate methods for effluent testing can take a lot of effort. The clean sampling techniques, however, can be used for effluents and their use is encouraged. EPA will explore the possibility of setting up some training sessions if there is interest in the State.

4. DEP gave a quick overview of how reporting limits compare to ambient water quality criteria. A total of 111 priority pollutants were examined by comparing the lowest criterion for each to the reporting limit. Of these, 15 compounds do not have established criteria. For another 37 compounds, the reporting limit is lower than the criteria. The remaining 59 compounds have criteria below the reporting limit. In this group, a breakdown was done comparing the ratio of the reporting limit to the lowest criterion for each compound. Some 21 compounds have a factor of 10:1 or less; another 4 are within the range of 10:1 to 50:1; 18 are over 1000:1.
5. DEP reported the results of a review of arsenic exceedences to determine if regional trends are evident. Using those exceedences occurring at or above DEP's reporting limit of 5 ug/L, a total of 27 facilities have had an exceedence. For many, only a single exceedence had been recorded. There did not appear any regional trends.
6. DEP distributed a sheet with tables showing the distribution of WET exceedences in various ways: by season of the year, by type of discharge and by year over the life of the program. Trout did show more exceedences in the early part of the year, but there were few exceedences overall and it not known if the seasonal availability of fish may bias the total number of tests done. Neither the type of facility or the year of testing seemed to present any clear trend.
7. DEP presented a conceptual proposal for changes to the present Section A of the rule. This section addresses the establishment of water quality criteria for toxics. DEP suggested that this section be converted to a separate rule. Doing so will make the criteria more accessible to various DEP programs and the public that use the criteria for various purposes beyond the toxics control program. Also, establishing the criteria in a separate rule will simplify the process of keeping them updated as new information becomes available. DEP proposes to use the latest EPA guidance as the basis for setting Maine water quality criteria. The statewide criteria would be presented in table or list form to make it easier for persons to find information. The new rule would also include the assumption for hardness, temperature, salinity, etc. used to develop the statewide criteria where applicable. No significant changes are proposed for the current subsections for alternate criteria. The form of metal - dissolved or total - needed to be clarified. DEP stated that it intended to express metals as total metals. The means to apply translator values to convert dissolved to total metal needs to be considered. The group indicated that locating the water quality criteria in a separate rule seemed to be an acceptable idea.
8. Sediment impacts were discussed at length. There was concern that toxic pollutants accumulate in sediments and may pose long-term problems not identified in effluent testing and standards as currently applied. Consideration of long-term sediment toxicity is an important independent element and it is shortsighted to not include this in an overall toxics control program. Discussion points included the following.
 - EPA noted that the agency is nowhere near producing sediment standards.
 - NOAA (dredging criteria) and Canadian agencies do have standards.

- Sediment impacts might be better addressed as part of SWAT or a similar program.
 - The biomonitoring program can give some indication of pollutants in the sediment.
 - Stringent restrictions should not be imposed on discharge sources to make up for uncertainty due to a lack of understanding about sediments.
 - We need to look at the big picture; if sediment toxicity is a problem, perhaps more stringent effluent limits are needed.
 - Sediment is a good "integrator" of pollution and sediment information could be used to focus effluent testing. There is an opportunity to coordinate information from different programs such as SWAT and the Casco Bay project and try to link that to point and non-point sources.
 - DEP has only little sediment information; most of that is in marine waters.
 - The biomonitoring program ("rock baskets") information is not too helpful since sample sites are usually selected to avoid areas of high sediment deposition.
 - Other monitoring efforts or programs may be more appropriate to evaluate sediment conditions.
 - We need to do something to better address sediments, maybe outside the scope of this rule.
 - The group should support grant money for sediment studies and not impose requirements on discharge sources.
9. The group discussed options and ideas for change of Section B, covering the scope, type and frequency of testing. DEP's initial proposal was that dilution factors be used for the primary consideration for testing requirements and that the same basic testing requirements be applied to both municipal and industrial sources (see outline of proposed rule changes distributed in advance of the meeting). The group had a wide-ranging discussion of topics in this broad area. For organization here, the discussion is broken into five areas that define testing requirements and alternatives with the points raised in each area.
- A. Coverage of rule and testing requirements. What types of discharges should be covered by the rule?
- The rule should engage as many discharge sources as possible at some level, perhaps through participation in pollution prevention or education efforts.
 - What constitutes industrial process waste? DEP noted that in general it is thought of as water coming in contact with a manufactured product where a value-added process beyond cleaning or repackaging is done.
 - The rule should allow individual determinations for specific sources such as landfills, ash piles, log storage areas, etc.
- B. Alternatives to effluent testing. Are there other mechanisms besides effluent testing to address discharges of toxic substances?
- It is important to consider pollution prevention and educational programs
 - Pollution prevention could be allowed in lieu of some effluent testing requirements.

- The toxicity reduction and identification approach could be applied as a means to reduce mass loadings from large discharge sources.
 - Pollution prevention may be especially useful at smaller sources.
- C. Exemptions and Inclusions to the rule. The current rule exempts some facilities from testing and these should be reviewed for current applicability and usefulness.
- Municipal facilities licensed for a flow of <50,000 gallons per day. How many facilities are in this group? Is just dilution a better cut-off?
 - The use of the EPA major facility designation should be eliminated.
 - With the assumption that municipal facilities with primary-only treatment waivers are in low impact areas, DEP has in the past excluded them from testing. If continued, this practice should allow for including individual plants where lower dilution factors or local circumstances dictate.
 - Permit applications could be used as more effective screens to identify potentially toxic pollutants even if they are not on the priority pollutant list.
 - Dilution factor is a more important criteria than the size (permitted flow) of a facility.
 - There is concern about discharges from large facilities into high dilution situations. The mass loading of pollutants is still high.
- D. Testing criteria. How should test requirements be established?
- High dilution facilities are a concern since their mass loading can be high and this should be weighted against the dilution factor.
 - Low dilution facilities have a high risk of exceedences, but other larger facilities may have a potential for far-field impacts.
- E. Testing frequency. How often should a facility test for various parameters?
- We need to avoid testing for the sake of testing.
 - Concerned with too little WET testing at facilities with higher dilution factors. There is a need to identify the relatively more toxic discharge sources.
 - Conditions change over time and it is the obligation of a facility to demonstrate through testing its current situation. Some testing is needed at all facilities.
 - One test per year should be the minimum.
 - Testing requirements need to have a reason and there needs to be defined methods for evaluating the results.
10. Next Steps. For the next meeting, DEP will develop a "straw man" proposal for rewriting of Sections A and B of the current rule. This will be sent to the group prior to the next meeting. DEP noted that on September 27 it will be making a one hour presentation on the toxics rule review process at the Maine Wastewater Control Association fall conference. Members of the stakeholders group are invited to participate in that presentation.